

EXHIBIT AX



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 30, 2022

Dr. Jason Reynolds, Superintendent
Peoria Unified School District
6330 West Thunderbird Road
Glendale, Arizona 85306

via email only to [redacted content]

Re: Peoria Unified School District
OCR Case 08-22-1273

Dear Superintendent Reynolds:

This letter is to notify you of the disposition of the above-referenced case stemming from a complaint filed with the U.S. Department of Justice (DOJ) on November 18, 2021. On March 9, 2022, DOJ referred the complaint to the U.S. Department of Education, Office for Civil Rights (OCR). On April 11, 2022, OCR opened an investigation into whether Peoria Unified School District (the District) failed to adequately respond to student and employee racial harassment of the Complainant's daughter, who is Black, (the Student) at [redacted content] (School).

OCR conducted this investigation under Title VI of the Civil Rights Act of 1964 (Title VI), and its implementing regulations, 34 Code of Federal Regulations (C.F.R.) Part 100, which prohibit discrimination based on race, color, or national origin in programs or activities receiving federal financial assistance. As a recipient of federal financial assistance from the Department of Education, the District is subject to Title VI and its regulations.

I. Summary of OCR's Findings

OCR found that racial harassment from student peers and District employees created a hostile environment for the Student in school years (SY) 2020-21 and 2021-22, and that the District had notice of the hostile environment and failed to respond adequately to redress it. Moreover, information from the Complainant and Student, and records in the District's first data response to OCR, suggested that other students in grades 5-8 at the School were also subjected to peer harassment based on race, color, and national origin during SY 2021-22. Based on OCR's review of District records and interviews with seven students, six parents, and thirteen employees at the School, OCR identified numerous incidents of peer harassment based on race, color, and national origin of over a dozen grade 5-8 students that involved racial and ethnic slurs, epithets, gestures, symbols, and jokes. Based on the documentary evidence and twenty-two interviews, OCR found by a preponderance of the evidence that in SY 2021-22 the District: (1) failed to adequately investigate reported peer harassment based on race, color, and national origin to determine if it created a hostile environment for the students who were the subject of those reports; (2) failed to offer any supports or remedies to students who were harassed; (3) repeatedly responded

ineffectively, or not at all, to reported harassment, allowing it to continue on a consistent basis and to create a school-level hostile environment; and (4) failed to investigate the known hostile environment at the School to identify other students who may have been subjected to harassment and a hostile environment but did not report such harassment to the School given its repeated failures to respond promptly and effectively to reported harassment.

OCR's investigation also identified a compliance concern with the District's recordkeeping and compliance reporting under the Title VI regulations. Timely, accurate, and complete recordkeeping will be essential to ensuring the District effectively responds to notice of student-on-student and staff-on-student harassment based on race, color, and national origin in the future.

The District agreed to address OCR's noncompliance findings and compliance concern under Title VI through the enclosed Resolution Agreement.

II. Legal Standards

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which Title VI applies. The existence of a hostile environment based on race, color, or national origin that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient constitutes discrimination on the basis of race, color, or national origin in violation of Title VI.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on race, color, or national origin existed; (2) the recipient had actual or constructive notice of the hostile environment; and (3) the recipient failed to respond adequately to redress the hostile environment.

Harassment creates a hostile environment when the conduct is sufficiently severe, persistent, or pervasive so as to interfere with or limit an individual's ability to participate in or benefit from a recipient's program. Harassing acts need not be targeted at the complainant in order to create a hostile environment; the acts may be directed at anyone. The harassment also need not be based on the complainant's or victim's race, color, or national origin so long as the harassment is motivated by race, color, or national origin. For example, the harassment might be based on the race, color, or national origin of a friend or associate of the victim. The harassment must, in most cases, consist of more than casual or isolated incidents to establish a Title VI violation. Whether harassing conduct creates a hostile environment must be determined from the totality of the circumstances. OCR will examine the context, nature, scope, frequency, duration, and location of the harassment, as well as the identity, number, age, and relationships of the persons involved. If OCR determines that the harassment was sufficiently severe that it would have adversely affected a reasonable person, of the same age and race, color, or national origin as the victim, under similar circumstances, from participating in or enjoying some aspect of the recipient's education program or activity, OCR will find that a hostile environment existed.

A recipient may be found to have violated Title VI if it has failed to correct a hostile environment based on harassment of which it has actual or constructive notice. A recipient is

charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. In other words, if the recipient could have found out about the harassment had it made a proper inquiry, and if the recipient should have made such an inquiry, knowledge of the harassment will be imputed to the recipient.

Once a recipient has notice of a hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the responsive action by assessing whether it was reasonable, timely, and effective. The appropriate response to a hostile environment based on race, color, or national origin must be tailored to redress fully the specific problems experienced as a result of the harassment.

Additionally, a recipient violates Title VI if one of its agents or employees, acting within the scope of their official duties (i.e., such that the individual has actual or apparent authority over the students involved), has treated a student differently on the basis of race, color, or national origin in the context of an educational program or activity without a legitimate, nondiscriminatory reason to interfere with or limit the ability of the student to participate in or benefit from the services or activities provided by the recipient. If the alleged harasser is an agent or employee of a recipient, acting within the scope of their official duties, then the individual will be considered to be acting in an agency capacity and the recipient will be deemed to have constructive notice of the harassment.

III. Background

The District is located in Peoria, Arizona, approximately 35 miles northwest of downtown Phoenix. The District has 34 schools, including the School. During SY 2021-22, the School served approximately 1,112 students from pre-school to eighth grade. The School's student population was 69.5% white, 18.8% Latino, 6.4% multi-racial, 2.9% African American, and 1.9% Asian.

OCR's investigation focused primarily on SY 2021-22. OCR requested and reviewed a variety of records from the District, including internal and external communications, student and parent complaints, investigation records, student discipline records, personnel records, the Student's education records, and District policies, procedures, forms, and handbooks. Additionally, OCR interviewed the District's Chief Personnel Officer, the School's principal (Principal) and assistant principals for grades 5-8 (AP 1) and K-4 (AP 2), nine teachers who worked at the School, the Complainant, the Student, six other students of color who attended the School and some of their parents, and the parent of another student of color who attended the School. OCR attempted to interview a former teacher at the School and six additional families, but they did not respond to OCR's voicemails and emails.

IV. Peer and Employee Harassment of the Student

The Complainant and Student told OCR that other students regularly used the n-word and made racist jokes in the Student's presence at the School in SY 2020-21 and SY 2021-22. The Student told OCR that students at the School asked her why her lips are big and commented on her skin color and hair. She also reported that some white students mocked the murder of George Floyd

[redacted content] at the School in [redacted content] 2022. The Complainant reported to OCR that three white teachers made comments about the Student's hair and touched it between the spring of 2021 and the fall of 2021, and that this commentary and touching led other students to make similar comments and touch her hair. The Complainant and Student reported this harassment to the School and allege that the School failed to adequately respond.

As discussed below in the Section entitled, "Peer Harassment of the Student," OCR found that students at the School used racial slurs and made race-based jokes in the Student's presence, and that she was aware of other racial harassment at the School that included students drawing racially offensive symbols and performing racially offensive gestures. OCR also confirmed through interviews and record reviews that students repeatedly used the n-word, including calling the Student the n-word, and created a [redacted content] mocking the killing of George Floyd that was seen by the Student's friend who reported it to the Student and another Black student in [redacted content] 2022.

As detailed below in the Section entitled, "Employee Harassment of the Student," OCR found that three white teachers at the School commented on and touched the Student's hair and that other students began to make similar comments about, attempted to touch, and touched the Student's hair. District records and interviews confirmed that the Student and the Complainant reported the peer and teacher harassment to the School and revealed that School employees also reported the peer harassment. The District knew that these incidents caused the Student to feel sad, angry, and embarrassed. She requested to be moved out of the teachers' classes in 2021 and by [redacted content] 2022 asked to complete the school year remotely to avoid the harassment. The District allowed her to change her classes and to complete SY 2021-22 online.

A. Findings of Fact

OCR first summarizes its findings of fact regarding peer harassment of the Student in SY 2020-21 and SY 2021-22 and then the three teachers' harassment of the Student in the spring and fall of 2021.

1. Peer Harassment of the Student

The Student began attending the School in [redacted content] grade. During SY 2021-22, she was [redacted content] years old and in the [redacted content] grade at the School.

When the Complainant filed her complaint with the Justice Department in November 2021, she alleged that teachers and students had been racially harassing the Student for over one year, in other words throughout SY 2020-21 and into the fall of SY 2021-22. In interviews with OCR, the Complainant and the Student reported that during SY 2020-21, a white [redacted content] student (Student 1) repeatedly used the n-word during the Student's [redacted content] class and [redacted content] class. According to the Student, the [redacted content] teacher (Teacher 1) said that she would address the use of the word, and the [redacted content] teacher (Teacher 2) told Student 1 that the language was inappropriate. Other than these responses, the District took no action related to these incidents. Both teachers told OCR that they did not recall these incidents.

In [redacted content] 2021, according to the Complainant and Student, the Student and [redacted content], a Black [redacted content] student (Student 2), informed their [redacted content] teacher (Teacher 3) that several students were using the n-word. Upon Teacher 3's request, the Student and Student 2 provided Teacher 3 with a list of students who use the n-word. According to Teacher 3, the list included two white [redacted content] students (Students 3 and 4), and one Hispanic [redacted content] student (Student 5). Teacher 3 told OCR that he determined that the allegations were credible and provided the list of students to AP 1. AP 1 told OCR that she asked Students 3 and 4 if they used the n-word, the students denied doing so, and the investigation ended. AP 1 informed OCR that District staff failed to follow up with the Student, Student 2, and Teacher 3 about the allegations and that Students 3 and 4 listed did not face any consequences because the allegations could not be proven. AP 1 subsequently discarded the list.

On [redacted content] 2021, the Complainant emailed the Principal about teachers, broadly, failing to address students' use of the n-word. The Complainant's e-mail stated that "[f]or years, teachers at [the School] have ignored children using [n-word] to antagonize African-American children" and that "vile phrases are met with indifference, a dismissive attitude, and passivity from teachers." The Complainant also wrote, "And each time my daughter has to internalize the verbal abuse because of inaction by teachers." The Complainant further stated that the Student was "not alone in her struggles regarding racism" and that "racial discrimination" at the School was widespread. In an interview with OCR, the Principal acknowledged that he did not investigate the Complainant's allegations of racial harassment directed at the Student or other students. The Principal further acknowledged to OCR that he failed to adhere to any District policies or procedures in responding to this complaint and, instead, followed his "instincts."

The following day, [redacted content] 2021, the Principal met with the Complainant to discuss the Student's allegation that a white [redacted content] student (Student 6) called the Student the n-word [redacted content] in spring 2021. The Principal told OCR that he spoke with Student 6's mother. Neither the incident nor the reported parent contact is reflected in Student 6's discipline records or parent contact log.

The Student alleged that, in [redacted content] 2022, during a class about European colonialism in Africa, a white [redacted content] student (Student 3) said to the Student, "That's why [n-words] pick cotton, [n-word]." According to the Student and Teacher 4, the Student informed Teacher 4 of the comment, and then Teacher 4 and Student 3 went to the hallway to discuss the Student's report. According to Teacher 3, when he saw Teacher 4 and Student 1 in the hallway, Teacher 3 told Teacher 4 that he had previously heard Student 3 use the n-word. Teacher 3 also told OCR that he was not surprised to hear that Student 3 was accused of using the n-word again. Teacher 4 sent Student 3 to the front office. AP 1 told OCR that Student 3 was given a lunch detention. In an email to the Principal, AP 1 wrote that another teacher also told her that Student 3 had used the n-word. The incident was not reflected in Student 3's discipline record.

During the last week of [redacted content] 2022, a white [redacted content] student [redacted content] created a [redacted content] to mock the death of George Floyd. [Redacted sentence]. Student [redacted content] sent this [redacted content] to another white [redacted content] student [redacted content]. Teacher 5 informed OCR that she noticed [redacted content] and told the two

students that the [redacted content] was inappropriate. Teacher 5 also shared that she showed the [redacted content] to Teachers 4 and 8 and notified AP 1 of the incident.

According to AP 1, a white [redacted content] student (Student 7), [redacted content], saw the [content]. Student 7 informed the Student and another Black [redacted content] student (Student 2) about the [redacted content]. AP 1 emailed Teacher 3 to notify him that she disciplined the students by placing them in the main office during their homeroom and study hall. AP 1 also wrote, “[T]he racist behavior from [Student [redacted content]] is continuing and I plan to infuse some cultural sensitivity tasks during that time too.” Teacher 3 informed OCR that Student [redacted content] had already been accused numerous times of using the n-word, and therefore, Teacher 3 believed the consequences for Student [redacted content] were inadequate. According to AP 1, she watched a video with Student [redacted content] and talked to him about racism. Additionally, Student [redacted content] emailed Student 2 an apology, which read, “[Redacted content].” During the same school day, the Student, Student 2, and Student 7 shared their concerns with AP 1 that Students [redacted content] did not receive a harsher consequence for the [redacted content]. AP 1 later wrote to Teacher 4 about the exchange, noting, “I expressed to [the Student, Student 2, and Student 7] that they need to be part of the solution through peer-to-peer education and raising awareness in partnership with us.”

The Student told OCR about other alleged incidents that she did not report to School staff because they had already demonstrated an unwillingness to intervene in such matters and she did not believe they would respond. For instance, she shared that in [redacted content] 2022, various students, including a white [redacted content] student (Student 8), said during class, “[Another student] gave me the [n-word] pass; so, it’s okay if I say it.” The Student also reported that during [redacted content] 2022, a Hispanic [redacted content] student (Student 9) asked the Student, during class, if she would “give the [n-word] back to white people.” Then, according to the Student, during homeroom [redacted content], a white [redacted] student (Student 10) put his hands up while another student pretended to shoot him and said, “Calm down. You can’t kill me. I’m not Black.” Finally, the Student told OCR that [redacted content], a white [redacted content] student (Student 11) screamed, “I can’t breathe,” while other students laughed.

The Complainant and Student informed OCR that the racial harassment made the Student feel upset and angry, want to avoid school, withdraw socially, and have lower self-esteem. The Complainant also told OCR that the Student had to have [redacted content] as a result of the harassment. At the end of SY 2021-22, the Complainant requested that the Student be able to attend class remotely to avoid attending the School. On [redacted content] 2022, the Principal responded that the School would work with the Student and Complainant if that was the direction they wanted to go. The family moved out of the District before the SY 2022-23 began due to the harassment at the School and the District’s failure to respond.

2. Employee Harassment of the Student

The Complainant and Student told the School and OCR that three white teachers at the School made inappropriate comments about and touched the Student’s hair. They also reported that other students began mimicking the teachers by making similar comments about, attempting to touch, and touching the Student’s hair. Additionally, they alleged that these incidents caused the

Student to feel sad, angry, and embarrassed, and to request to be moved out of the teachers' classes.

In interviews with the District and OCR, the three teachers admitted to touching the Student's hair. Two of the teachers – Teachers 3 and 4 – told OCR that they could not recall ever touching another student's hair. Teacher 8 recalled touching only one other student's hair – another Black, female [redacted content] student (Student 2). The Student and Student 2 confirmed for OCR that Teacher 8 touched Student's 3's hair. AP 1 told OCR that she believes that white teachers were "fascinated" with Black women's hair because it is "different," and that may be why the three white teachers touched the Student's hair. AP 2 shared with OCR that the teachers touching the Student's hair is "incomprehensible" and that they should have known never to touch a child in that manner.

a. [Redacted Content] 2021 Incident Involving Teacher 7

On [redacted content] 2021, during [redacted content] class, the [redacted content] teacher, Teacher 3, touched the Student's hair. According to the Student, Teacher 7 walked over to the Student and pulled the Student's hair, which was, according to Teacher 7, in a "pom-pom style." The Student told OCR that Teacher 7 said, "Your hair is really pretty," "Is it real or fake," and "How long did it take?" In response to her hair being touched, the Student told Teacher 7, "I don't like when people touch my hair." Prior to this incident, Teacher 7 had repeatedly asked the Student if she could touch her hair and the Student had said "no" each time.

In an interview with OCR, Teacher 7 stated that she "booped [the Student's] pom-pom hair." She told OCR that she was merely trying to give the Student a "compliment." Teacher 7 denied asking if the Student's hair was fake. Teacher 7 acknowledged that she did not ask for permission before touching the Student's hair, that she had touched the Student's hair on one other occasion, and that she previously asked the Student if she straightens her hair, how long it takes to straighten her hair, and the length of her hair when it is straightened.

That night, the Complainant emailed a complaint to the Principal and AP 2. The complaint alleged that Teacher 7 "feels this micro-aggressive behaviour [sic] is perfectly fine with African-American students, as she does not do this to others" The Principal and AP 2 showed Teacher 7 the Complainant's complaint.

On [redacted content] 2021, the Principal contacted the Complainant to schedule a meeting for the following day. During the meeting on [redacted content] 2021, according to the Complainant, the Principal told her that he was extremely embarrassed by Teacher 7's conduct and that Teacher 7 should know not to touch students. According to the Principal, the Complainant told him that Teacher 7 had touched the Student's hair twice and that the incident caused other students to ask to touch the Student's hair. The Principal wrote to OCR that, during his conversation with Teacher 7, he learned that "the Student had asked for [Teacher 7] to not [sic] touch her hair during a previous class and [Teacher 7] had forgotten the request when she touched it again." The Principal gave Teacher 7 [redacted content].

On [redacted content] 2021, Teacher 7 left a voicemail for the Complainant and emailed her, in part, “I am so deeply sorry [redacted content].” The following day, according to the Principal, Teacher 7 apologized to the Student in front of the [redacted content] class.

On [redacted content] 2021, the District issued [redacted content] to Teacher 7 pursuant to Board Policy GBEBB. That policy read, in relevant part, “At all times teachers and other staff members will accord students the dignity and respect that they deserve, and avoid embarrassing any student unnecessarily.” Teacher 7 was ordered to “[redacted content]” and “[redacted content].” The form read, “[Redacted content].”

According to the Student, after this incident, students started asking the Student whether her hair was “fake” and questioned why the Student wore her hair in certain styles, such as braids. The Principal granted the Complainant’s request to move the Student out of the [redacted content] class. According to the Complainant and Student, the Student has since lost her love for [redacted content].

b. [Redacted Content] Incident Involving Teacher 8

According to the Complainant and Student, on or about [redacted content] 2021, when the Student was turning in an assignment, Teacher 8 placed her hand on the Student’s hair and said, in front of other students, her hair was “so nice and pretty.” According to Teacher 8, she said to the Student, “Did you have your hair done? It looks really pretty.” Then, according to Teacher 8, she requested the Student come over to her and said, “I bet that took a long time. Must’ve taken a lot of patience,” and the Student replied, “Thank you.” Teacher 8 told OCR that she only brushed against the Student’s hair and that she did not believe that she upset or offended the Student. Teacher 8 acknowledged that she did not ask to touch the Student’s hair. The Principal wrote to OCR that the School’s administrators received a report that Teacher 8 touched the Student’s hair and that, in front of the class, Teacher 8 commented on whether the Student had hair “extensions.”

During the same class period, according to the Student, Teacher 8 approached the other Black [redacted content] student in the class (Student 2) and pretended to pick lint out of her hair and throw it on the ground. According to Teacher 8, she walked up behind Student 2, who was sitting in her desk, and removed a piece of lint from Student 2’s hair. Teacher 8 told OCR that she does not recall touching the hair of any other students besides these two Black students.

The Principal’s notes from a [redacted content] 2021 meeting with the Complainant indicate that several students asked the Student about the hair extensions after the class in which Teacher 8 touched the Student and Student 2. In an email to AP 1, Teacher 8 confirmed that she asked the Student if she had hair extensions but denied that she asked in front of the class. In the same email, Teacher 8 acknowledged that she removed “a piece of white yarn” from Student 2’s hair and referred to it as lint during class.

The Student and Complainant told OCR that the Student and Student 2 were both extremely upset. The Student told AP 1 about Teacher 8’s conduct. AP 1 asked Teacher 8 to speak with both students before the end of the school day and noted that “hair is a very sensitive issue for

both girls and something to stay clear of even if we are trying to be kind.” Teacher 8 replied that she would speak with both students. According to Teacher 8, she apologized to the Student by saying to her, “[Redacted content].”

Shortly following the incident, Teacher 8 met with the Principal and AP 1. According to the Principal, during this meeting, the Principal and AP 1 informed Teacher 8 that her behavior was “unacceptable” and that she “could not touch a student’s hair without permission.” The Student was reassigned out of Teacher 8’s class, at the request of the Complainant.

c. [Redacted Content] 2021 Incident Involving Teacher 6

On or about [redacted content] 2021, when the Student was sitting in class and working on an assignment, her [redacted content] teacher, Teacher 6, touched her hair. According to the Complainant and Student, Teacher 6 said at the time, “I like the feeling,” and other students witnessed Teacher 6’s conduct. The Student was very embarrassed and upset. According to Teacher 6, she touched the Student’s hair because it was “pretty.” Teacher 6 told OCR that she could not recall touching another student’s hair in her “[redacted content] years of teaching.”

The Student told AP 1 about Teacher 6’s conduct. On [redacted content] 2021, the Complainant emailed the Principal and noted that this was the third teacher who had touched the Student’s hair. The Complainant further stated that, after this incident, the Student felt more isolated as students repeatedly asked the Student about her hair using the “exact verbiage” of Teacher 6. The Complainant further wrote that the Student “has been singled out, put on display in front of her classmates, poked, prodded, and pulled on by teachers at [the School] and that Teachers 6, 7, and 8 “have assumed that it is appropriate to single out my African-American daughter for her hair. The Complainant further alleged that the “effort to disguise the racial harassment by praising my daughter as the ‘the black girl with pretty hair’ is transparent and insulting” and that teachers touching her hair is “a violation of [her] child’s right to an education in a safe, non-threatening environment.”

The following day, the Principal met with the Complainant. His notes reflect that Teacher 6 pulled and held onto the Student’s braids and said, “I love what you’ve done with your hair.” The Complainant requested that the Student be removed from Teacher 6’s classroom and the School accommodated this request. According to the Principal, he met with Teacher 6 on the same day, and Teacher 6 acknowledged that she touched the Student’s hair but “affirmed everything she did was meant as a compliment.”

According to Teacher 6, she called the Complainant and Student and explained that she loved the Student and was merely being complimentary, and that her actions were driven by compassion, not malice. During the call, Teacher 6 told OCR, the Complainant explained the problem with people commenting on Black women’s hair and that, as a white woman, Teacher 6 could not understand. According to the Student, Teacher 6 stated that the Student should be grateful that someone likes her hair. Neither the Complainant nor the Student believed Teacher 6 felt any remorse for her conduct.

On [redacted content] 2021, the District's Chief Personnel Officer provided Teacher 6 with a "[redacted content]." The Notice included a scheduled meeting date.

On [redacted content] 2021, Teacher 6 submitted a written response to the Chief Personnel Officer. In her response, Teacher 6 described her relationship with the Student as "positive" and "warm," and said she was the Student's "favorite teacher." Teacher 6 wrote that she had "noticed [the Student] had gotten her hair done," "affectionately and warmly extended [her] arm around [the Student's] shoulder, "smiled," and said "how pretty." She also stated that District administrators failed to tell School staff about Teacher 8 touching the hair of the Student and Student 2, and how such conduct could be perceived as racist. Teacher 6 further wrote to the Principal, "[redacted content]" Teacher 6 concluded the response by requesting that she be [redacted content].

After his investigation into the above incident, the Principal issued [redacted content] for Teacher 6's conduct. The Principal and Chief Personnel Officer explained to OCR that Teacher 6 received a [redacted content] than Teacher 8 because Teacher 6 had previously received a [redacted content] for [redacted content]. Teacher 6 appealed the [redacted content], and the Principal worked in tandem with the Chief Personnel Officer to respond to her appeal. However, the Chief Personnel Officer missed the deadline to file a notice of decision; consequently, Teacher 6's [redacted content] was rescinded. According to the Chief Personnel Officer, her investigation did not uncover any malice or ill intent by Teacher 6 and she would have rescinded the [redacted content] even if she had not missed the filing deadline.

B. Legal Analysis and Conclusions

As explained below, OCR found that during SY 2020-21 and SY 2021-22, the Student was subjected to peer and teacher harassment based on race that created a hostile environment and that the District knew of this hostile environment but failed to take appropriate action to address it, in violation of Title VI.

1. Peer and Employee Harassment Created a Hostile Environment for the Student

Racial harassment must be severe, pervasive, or persistent to create a hostile environment under Title VI. Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness. The appropriate response must be tailored to redress fully the specific problems experienced as a result of the harassment and must be reasonably calculated to prevent its recurrence.

The racial harassment the Student experienced was severe, pervasive, and persistent. The peer harassment involved multiple perpetrators, took place in multiple classes, and occurred over at least three consecutive semesters while the Student was in [redacted content] grade. OCR confirmed through interviews and review of records that during SY 2020-21, Student 1 used the n-word in classes with the Student and Student 6 called her the n-word. Additionally, during SY 2021-22, Student 3 made a joke about slavery to the Student, used the n-word in the Student's

presence, and called the Student the n-word; and Students 9 and 8 used the n-word in front of her. Additionally, the Student heard about Student [redacted content]'s [redacted content] mocking the killing of George Floyd and reportedly witnessed Student 11 mocking George Floyd while other students laughed.

Moreover, OCR found that between [redacted content] and [redacted content] 2021 three white teachers touched the Student's hair without her consent. One of the teachers did so even after the Student had denied the teacher's repeated requests to touch her hair. The touching occurred three times in five months of school being in session, even though the Student and Complainant made clear after the first incident that they found the touching of and commenting on the hair offensive. The second and third instances of touching also occurred after School staff knew that the Student had been exposed to the widespread use of the n-word by other students (see Section V below). At least two of the three incidents occurred in front of other students, which reportedly led to some of the students commenting on and touching the Student's hair.

Two of the teachers told OCR that they had never touched a white student's hair during their teaching careers, and one teacher said that the only other student whose hair she has touched was that of a Black student, which happened in front of the Student. The teachers claimed that they were merely attempting to compliment the Student. AP 1 told OCR that she believed the teachers touched the Student's hair because, at least in part, they were fascinated with Black people's hair. The Principal and AP 2 told OCR that the teachers touching the Student's hair was inappropriate.

OCR found that students' racist slurs, jokes, comments, and other actions to or in front of the Student – combined with the unwelcome touching and commenting on the Student's hair by three of her teachers, who did not touch the hair of any white students – created a racially hostile educational environment for the Student. The harassment from peers and employees made the Student feel targeted, humiliated, and upset – so much so that she asked to be moved out of all three teachers' classes mid-semester and then to finish the school year online. She and the Complainant reported to School staff and OCR that the harassment caused her to become more socially withdrawn, have lower self-esteem, and want to avoid school. A reasonable [redacted content]-year-old Black student would have experienced various and repeated incidents of both peer and employee racial harassment as a racially hostile environment. Indeed, the touching adversely affected the Student's enjoyment of [redacted content], as she felt compelled to ask to be moved out of the [redacted content] class. She then felt compelled, after the two additional incidents of touching, to ask to have her schedule changed again mid-semester during SY 2021-22.

2. The District Had Actual Notice of the Hostile Environment for the Student

The District had actual notice of the racial harassment of the Student and the racially hostile environment she experienced at the School. In [redacted content] 2021, the Student gave Teacher 3 a list of students who were using the n-word. Teacher 3 determined that the list was credible and provided it to AP 1. Then, on [redacted content] 2021, the Complainant emailed a complaint about racial harassment of the Student to the Principal. The complaint mentioned that the Student was “internaliz[ing] the verbal abuse and struggling with the racism.” The following day, the

Complainant told the Principal that Student 6 called the Student the n-word in [redacted content] 2021. School staff were also aware of Student 3's joke about slavery and use of the n-word and Student [redacted content] mocking the death of George Floyd. Finally, staff were aware of widespread racial harassment of minority students by other students at the School (see Section V below). In addition, the Complainant informed the District immediately after each incident involving a teacher touching the Student's hair, beginning in [redacted content] 2021 and twice again in [redacted content] 2021.

AP 1 and the Principal knew not only of the Student being racially harassed by students and staff but also of the hostile environment it had created for the Student. The Complainant shared with the School's administrators – at least in meetings on [redacted content] and [redacted content], and in emails on [redacted content] and [redacted content] – the effects of the harassment on the Student. AP 1 told OCR that the Student's "anger about the School and feeling discriminated against [was] growing and growing." The Principal twice granted the Student's request to change out of the classes of teachers who touched her hair, and he knew by [redacted content] 2022 that the Student no longer felt comfortable attending school in person. The Principal agreed to the Complainant's request to let the Student finish the school year virtually so that she could avoid going to the School.

3. The District's Response to the Hostile Environment for the Student

Because the District had notice of the peer and employee racial harassment and resulting hostile environment for the Student, OCR next analyzed whether the District adequately responded to redress this environment. OCR found that the District did not adequately investigate all reported incidents of peer and employee racial harassment of the Student. For example, the Principal told OCR that he did not investigate the Complainant's allegations of peer racial harassment, including students' use of the n-word toward the Student and other students, in the Complainant's email of [redacted content]. With respect to the email's allegations regarding the teachers' touching the Student's hair, the Principal interviewed the teachers but failed to take steps to ensure that the Student's other teachers did not touch or comment on the Student's hair. School staff also did not follow up with the Complainant and Student when they reported racial harassment in spring 2021, which included the Student providing School staff with a list of students who were using the n-word, or after the Principal met with the Complainant on [redacted content]. In these ways and others, the School staff did not adequately respond to the reported harassment of the Student.

OCR further found that the District did not take effective steps to prevent recurring harassment, including use of the n-word in the School or subsequent incidents of white students making light of law enforcement killing Black people. The Student reported that use of the n-word and racist jokes continued at the School in [redacted content] 2022, and this was confirmed by other students and records, as discussed in Section V below. The Student also reported to OCR two subsequent incidents of white students making fun of law enforcement killing Black people in [redacted content] 2022 – after the [redacted content] in [redacted content] 2022 about which School staff were aware.

The evidence indicates that the District rarely disciplined students for engaging in racial harassment, as discussed further in Section V. Though in some instances the School disciplined students involved in racial harassment incidents, the discipline was minor and inconsistent, and varied depending on the administrator who handled the matter and the student who engaged in harassment. For instance, according to staff interviewed by OCR, Student 6's consequence for calling the Student the n-word was parent contact, and Student 3 was given only a lunch detention for making a joke about slavery to the Student and calling her the n-word. AP 1 told OCR that Student 3 was given lesser consequences because [redacted content], yet these minor consequences failed to stop the harassment. Staff members and students told OCR that Student 3 regularly used the n-word and several people reported Student 3 for using the n-word, yet the District had no record in its student information system of his conduct, him receiving any discipline, or his parents being contacted.

OCR also analyzed the District's response to notice of Teacher 7's nonconsensual touching of the Student's hair, Teacher 7's comments about the Student's hair in front of other students, and how much both behaviors offended and upset the Student to determine whether the response was effective in stopping the unwelcome behavior. Though the District issued a "[redacted content]" to Teacher 7 and directed her to apologize, two more of the Student's teachers proceeded to engage in similar touching of and commenting on the Student's hair and the hostile environment continued, including some students' mimicking the teachers' offensive behavior. OCR recognizes that the Principal's warning and [redacted content] to Teacher 7 stopped her from continuing this behavior, but the District did not take effective action to prevent other teachers from touching or commenting on the Student's hair because Teacher 8 and Teacher 6 both did so. Even after receiving notice of the second incident involving Teacher 8, the District still failed to direct staff not to touch or comment on the Student's hair. Not long thereafter, Teacher 6 pulled on the Student's braids in class.

OCR further found that when the Complainant and the Student told the Principal that other students' were mimicking the teachers' behavior and making her feel targeted, humiliated, and upset, the District agreed to change her classes but it did not take action to ensure that her teachers stopped students from engaging in this behavior. The behavior continued and upset the Student, as did the peer racial harassment described above.

Despite knowing that the Student was in a racially hostile environment, the District never offered counseling or other support services to the Student. Additionally, the District did not take other measures to eliminate and prevent recurrence of a racially hostile environment, such as separating the student harassers from the Student; implementing social and emotional learning; offering mediation between the Student and her peers or teachers; providing counseling for the Student and students who were harassing her; providing training to the teachers who touched the Student's hair; or increasing supervision of the Student's interaction with peers who were engaging in racial harassment. District staff also did not follow up with the Complainant and Student to determine if racial harassment was continuing or if anyone had retaliated against the Student.

Based on the foregoing, OCR finds, by a preponderance of the evidence, that the District failed to adequately respond to notice of the racial harassment of the Student or to take reasonable steps

eliminate the racially hostile environment for the Student, in violation of Title VI and its implementing regulations.

V. Harassment of Other Students at the School

Based on interviews with the Complainant, the Student, six other students, five other parents, and thirteen District employees, OCR found that at least a dozen other students of color in grades 5-8 at the School were harassed by at least sixteen peers based on race, color, or national origin. The harassed students were Black, Hispanic, Asian, Indian, Palestinian, and multi-racial. The interviews and District records revealed that the harassment continued throughout SY 2021-22, often several times a month, with little to no discipline of the harassing students.

A. Findings of Fact

1. Harassment of Other Students – Generally

The Complainant and the Student told OCR that other students have used slurs such as “ching chong,” “monkey,” and “coon.” The Complainant and Student alleged that students have made mocking faces and noises targeting other students, such as pulling their eyes back to imitate an Asian student, as well as drawing racially offensive symbols such as Swastikas.

During interviews, several other students at the School told OCR that their peers engaged in harassment of students based on race, color, and national origin at the School. For example, a Black [redacted content] student (Student 12) told OCR that she had heard “many people” using the n-word, the n-word was used about once a week in classrooms and at recess, and Black students were called “monkey.” An Asian [redacted content] student (Student 13) told OCR that students said racial and ethnic slurs “all the time” and that he heard the n-word every day. Student 13 also indicated that he has heard Hispanic students called “beaners;” white students talk negatively about “Black skin and tell Black students, “I hate Black people;” and students pretend to speak Chinese and repeatedly say “ching chong.” Student 13 also shared that he has seen students pull back their eyes to mock Asian students. Another Asian [redacted content] student (Student 14) told OCR that she has have seen students draw Swastikas on notebooks, heard students say “monkey” “all the time,” and heard a white [redacted content] student (Student 3) use the n-word. A [redacted content] student who is [redacted content] (Student 15) told OCR that students use racial slurs, including the n-word, and that a student asked an [redacted content] [redacted content] student (Student 16) if she was going to bomb the School.

OCR’s interviews with School’s administrators and teachers further confirmed that students engaged in peer harassment based on race, color, and national origin at the School in SY 2020-21 and SY 2021-22. For example, AP 1 told OCR that she received numerous reports from students and staff about students saying the n-word throughout the School, including in hallways, at recess, and in locker rooms, and that the School is not a welcoming place for racial and ethnic minorities due to ongoing harassment. AP 1 also stated that she told the Principal that the School has a systemic problem with racism and bullying. Like AP 1, AP 2 told OCR that she has heard students use the n-word at the School. AP 2 also told OCR that she has seen Swastikas on school property. Teacher 3 told OCR that students have told him about other students using the n-word

and that there had been “talk” of students using the n-word “all year long.” Teacher 4 told OCR that students referred to COVID as the “China Virus.” Teacher 9 told OCR that she would not be surprised if students were being picked on or called a terrorist because of the color of their skin.

Multiple emails produced by the District to OCR also show that students at the School were engaging in peer harassment based on race, color, and national origin. For example, on [redacted content] Teacher 10 wrote to a parent, “... [T]he students in [redacted content] have been using racial slurs/jokes and [redacted content] meanness directed at many different students. I have never seen this amount of insensitive and unaccepting of others before at our school. It has been all over campus (location wise)...” Then, on [redacted content], Teacher 10 emailed the Principal, stating in part, “The 8th grade as a whole have been pushing boundaries hard ... N-words being dropped We would like STRONG admin support and aren’t really feeling it.” On [redacted content], the parent of a white [redacted content] student (Student 17) emailed the Principal expressing concern about “bullying and use of racial slurs that occur during recess.” She reported that the n-word was being “used rampantly.”

On [redacted content], the mother of a multi-racial [redacted content] student (Student 18) emailed the Principal about a white student using racial slurs toward her son on multiple occasions in multiple classes, yelling “master please,” and making jokes about slavery. The parent referenced two prior emails that she had sent to the Principal regarding another student who used racial slurs, and asserted that the Principal had not responded. On [redacted content], the mother of two students, emailed the Principal, stating in part, “... I also know that the N word is being said at the school and in the presence of teachers and no one, to my knowledge, has been disciplined for it.” On [redacted content], a teacher wrote about a white [redacted content] student, Student 19, “We have had issues with him making racial comments and touching people.”

During SY 2021-22, a white [redacted content] student (Student 7) created a document about a white [redacted content] student (Student 3) who was harassing other students. The Student wrote on the document that Student 3 “[s]ays n-word still.” Student 7 wrote that Student 3 “[s]ays the n-word almost every day.” Likewise, another student wrote that Student 3 “[s]ays the n-word.” AP 1 received a copy of this document but failed to investigate the alleged conduct.

Finally, responses to District-administered surveys of students and parents describe harassment based on race, color, and national origin at the School. In a parent survey concerning SY 2020-21, the parent of a [redacted content] student at the School wrote, “Discuss the racism at the school! It gets worse every year.” In a parent survey during SY 2021-22, a [redacted content] parent wrote, “racism and racial slurs get ignored.” During the last two school years, the following statement was included in a survey of School students: “Please identify 2-3 things that your school should/could be doing to improve.” Responses included: “the bullying, racism;” “there are also so many racist or homophobic comments going around all the time;” “racial discrimination;” “people respecting people of diverse opinions and backgrounds;” “disciplining the students better to stop any rude or racial comments that are used;” “racial coments [sic] or offensive words used twords [sic] students...;” “staff ... should stop the bad things that happen at school, including the racism, sexism etc.,” and “caring more about people be [sic] racist, homophobic, ect. [sic].” One student wrote, “This school is highly racist and it’s very sad. ... If

someone says the n-word the most that a teacher will say is ‘that’s not appropriate’. ... This school tolerates racism and it makes me question ‘Do I even belong at this school?’ The District did not investigate the issues reported in the parent and student surveys responses for SY 2020-21 or SY 2021-22.

2. Harassment of Other Students – Specific Incidents

OCR’s interviews also identified specific incidents of peer harassment based on race, color, and national origin at the School throughout SY 2021-22. For example, AP 1 reported that students have made ethnically offensive remarks to a [redacted content] student, including calling his relatives “terrorists” and commenting on him not eating during Ramadan. AP 1 also recalled that a white [redacted content] student (Student 4) drew Swastikas in a School bathroom. Consistent with other reports to OCR about the use of the n-word, AP 1 also reported that a Black [redacted content] student alleged to her that a white [redacted content] student (Student 20) called him the n-word.

The District’s records of reported harassment based on race, color, and national origin at the School produced to OCR also revealed the following chronology of instances of parents, students, and School employees reporting such harassment to School administrators, including AP 1 and the Principal throughout SY 2021-22. The District’s discipline records regarding harassment revealed additional instances and minor discipline.

On [redacted content], the parent of a multi-racial [redacted content] student (Student 21) sent an email to the Principal stating that another student had called her son an n-word at School. There is no record of how the Principal responded in the documents that the District produced to OCR.

On [redacted content], a white [redacted content] student (Student 22) “displayed racist actions and comments to several Afro-American students,” including calling one of them “a burnt piece of bacon,” and said that Black people “do not deserve to live” and “should die.” The discipline records indicate that the School gave Student 22 a one-day out-of-school suspension.

On [redacted content], Teacher 6 emailed AP 1 about a white [redacted content] student (Student 23) making racist remarks toward a Black [redacted content] student (Student 12). Student 12 had said that Student 23’s behavior “is going on in other classes and for a while.” Student 12 also yelled at Student 23 during class, “I’m tired of your racist comments that you’ve been making all year.” Discipline records indicate that Student 23 received a one-day in-school suspension.

On or about [redacted content], according to a behavior log maintained by Teacher 6, a white [redacted content] student (Student 24) turned off the lights in a classroom and made a joke about not being able to see a Black [redacted content] student (Student 25) in the dark. AP 1 told OCR that Student 24 had “preyed on” Student 25. There is no record of how the School responded in the documents that the District produced to OCR.

On [redacted content], an [redacted content] [redacted content] student (Student 16) reported to AP 1 that a multi-racial [redacted content] student (Student 18) had “constantly” harassed her,

including, according to AP 1, saying that Student 16 had a mustache and a hairy belly button. Records indicate that Student 18 received an in-school suspension.

On [redacted content], a [redacted content] teacher emailed a parent about her son, “He asked a girl if she was African American, she responded no and his reaction to that was saying the N word to her.” The teacher stated in the email that she gave the student a lunch detention and would tell the Principal if something similar happened in the future.

On [redacted content], a white [redacted content] student (Student 3) told an Asian [redacted content] student (Student 14) to go back to her country and to eat dog because that is “what they do.” Student 14’s mother emailed AP 1 to report Student 3’s comments. Her email read, in part, “Please address this egregious act of racism. I have been advised that there are other incidents regarding different cultures and racial ethnicity.” The next day, Teacher 3 emailed AP 1, stating in part, “I have another student ... who asked they be moved away from [Student 3] for racial overtones.” According to AP 1, she showed a “Words Matter” video to Student 3. Later, during class in [redacted content] 2022, according to the Student, a white [redacted content] student (Student 11) called Student 14 a “dog eater” and asked her if she used chopsticks. The teacher in that class (Teacher 3) told OCR that he was unaware of the incident.

On [redacted content], Teacher 11 emailed the School’s administrators, stating, “Today after class [a multi-racial [redacted content] student (Student 26)], told me that she has overheard [a white [redacted content] student (Student 27)] using the ‘N’ word multiple times and it upsets her.” There is no record of a response from the administrators in the documents that the District produced to OCR.

On [redacted content], according to discipline records, a white [redacted content] student (Student 28) repeatedly said the n-word in the cafeteria, including to two students of color. There is no record of how the Principal responded, and he could not recall if or how he responded.

On [redacted content], according to discipline records, a white [redacted content] student (Student 29) called a Black [redacted content] student (Student 30) “racial slurs.” The students then got into a fight. The Principal gave both students four days of out-of-school suspension for fighting. On [redacted content], Student 29 threatened to “shoot up the School” and kill a specific student, and “said the n-word during this time about 10-15 times.” There is no record of how the School responded in the documents the District produced to OCR.

On [redacted content], the mother of [redacted content] (Student 31) emailed a teacher to report that a student had called Student 31 a “black ni**er.” The next days, Student 31’s mother emailed the Principal about the incident and alleged that the School was discriminating against her child. There is no record of a response from the Principal. The District’s Chief Personnel Officer spoke with the mother.

On [redacted content], the parent of a white [redacted content] student (Student 32) emailed the Principal, in part, “[Student 32] has complained that a new boy at school calls her the N word every day. She wanted for us to have a meeting because she doesn’t feel heard when she has

made complaints about students.” The Principal could not recall if or how he responded, and records provided to OCR do not include this information.

On [redacted content], the mother of a Hispanic [redacted content] student (Student 33) emailed Teacher 11 that a student called her child a “monkey” and said that he would be a landscaper. The student admitted to School staff that he made these comments to Student 33. Teacher 11 rearranged the students’ seats and wrote to the mother, in part, “These kids just aren’t thinking about others when they make their ‘joke’ comments to each other and how it may impact their emotions.”

On [redacted content], according to the Student and an Asian [redacted content] student (Student 13) two white [redacted content] students (Student 34 and Student 11) mocked Student 13 by using a made-up language, saying “ching chong,” and pulling their eyes back during class. The teacher of that class (Teacher 4) told OCR that he was unaware of this alleged conduct.

On [redacted content], according to discipline records, a white [redacted content] student (Student 35) told a Hispanic [redacted content] student (Student 36) that her skin looked like burnt bread. According to AP 1, Student 36 was, as a result, very upset and insecure. Student 35 received a one-day in-school suspension.

Also on [redacted content], a Black [redacted content] student (Student 2) wrote to School staff about a Hispanic [redacted content] student (Student 37), “[He] was saying the n-word repeatedly and laughing and pretending like he was saying something else. The whole class heard and [the teacher] acted like she did not hear him say it. The whole class was telling him it was not funny and to stop. ... This has happened before. Ex. kids saying the n-word and teachers ignoring people saying it.” The Principal told OCR that he did not interview other students because Student 37 admitted to the conduct and that Student 37’s consequence was a one-day in-school suspension. The Principal also told OCR that he never talked to Student 37’s parents about their son’s behavior.

According to the District’s discipline records, on [redacted content], a white [redacted content] student (Student 38) and a Black [redacted content] student (Student 25) got into a fight during class after Student 38 called Student 16 a “monkey.” According to the Principal, he facilitated a conversation between Students 14 and 16, and called both of their parents. Records provided to OCR do not reflect the Principal’s actions.

On or about [redacted content], there was an incident on a social media platform involving students from the School and students from schools in another district. According to AP 1, two white [redacted content] students at the School (Students 38 and 39) were part of the chat. A Black [redacted content] student (Student 25) and an [redacted content] [redacted content] student (Student 16), both of whom attend the School, were cyberbullied in the chat. On [redacted content], Student 25 emailed screenshots and videos from the chat to AP 1. In the chat, students repeatedly called Student 16 the n-word and wrote the n-word, “I love Hitler,” and Swastikas on a photograph of her face. Photographs of Student 25’s face had Swastikas and the n-word drawn on them, along with homophobic slurs. The Principal informed School staff that “inappropriate sexual and racial comments” were made in the chat and that the parents of the

students involved were “working on things from their end.” AP 1 interviewed Student 25 about the incident. AP 1’s interview notes detail several racial slurs. District staff reported the situation to the local police department. During an interview with OCR, the Principal and AP 1 were unaware of what was happening since the District referred the incident to law enforcement; in other words, they had not followed up.

On [redacted content], Teacher 9 emailed AP 1 and another teacher to report that an [redacted content] student (Student 16) was being harassed by Student 39 and another student who asked Student 16 “what her favorite type of bomb is” and caused Student 16 to be “pretty upset.” Teacher 9 requested that AP 1 speak with the students. There is no record of how AP 1 responded in the documents produced to OCR.

On [redacted content], as SY 2021-22 was coming to a close, three [redacted content] students did a “Heil Hitler” salute and said “Heil Hitler” during a school fieldtrip, according to Teacher 9 and emails produced by the District. One of the students continued the conduct, even after Teacher 9 told him to stop. As a consequence, the School marked an “infraction” on the Student’s card.

3. The District’s Response to the Reported Harassment of Other Students

The District’s responses to numerous reports of student-on-student harassment based on race, color, or national origin at the School throughout SY 2021-22 were inconsistent and, at times, nonexistent. On several occasions, School staff failed to investigate adequately, or to investigate at all, student, parent, and employee reports of peer harassment based on race, color, or national origin. Moreover, School staff never conducted an analysis of whether the reported student-on-student harassment based on race, color, and national origin had created a hostile environment for the targeted students at the School. Even when the School did respond to certain reported incidents of harassment, it failed to offer any supports or remedies to the harassed students and its responses were ineffective and did not prevent the harassment from recurring. As detailed below in this section, OCR found that the District responded as follows: School staff gave some students who engaged in harassment relatively minor disciplinary consequences; AP 1 emailed teachers in grades 5-8; AP 1 showed a “Words Matter” video that did not specifically address race; AP 1 organized a “Words Matter” assembly for students in grades 5-8; and AP 1 established a “Bully Box.” These ineffective responses allowed the harassment to continue and to create a school-level hostile environment. The District then failed to investigate this known hostile environment at the School to identify other students who may have been subjected to harassment and a hostile environment but did not report such harassment given the School’s repeated failures to respond effectively to reported harassment.

OCR recognizes that AP 1 took some school-wide steps to respond to the reports of peer harassment at the School, even though they proved inadequate to prevent harassment from recurring. AP 1 was the administrator primarily in charge of student conduct in grades 5-8. However, she was a Teacher on Special Assignment (TOSA) and had never previously been an administrator or worked in the District. According to AP 1 and Teacher 1, AP 1 was too busy to adequately handle all the student behavior incidents, including harassment. AP 1 told OCR that her duties included: facilitating all Section 504 and Individualized Education Program (IEP)

team meetings for all students with disabilities in grades 5-8; managing arrival, lunch, recess, and dismissal duty every day; handling discipline for students in grades 5-8; providing classroom coverage for teachers due to a shortage of substitutes; handling matters for students in grades K-4 when AP 2 was away from the School or otherwise busy; and observing, evaluating, and supervising 19 teachers. AP 1 told OCR that she was “totally overwhelmed.”

OCR found that the District’s responses to students who harassed their peers were inadequate and ineffective. Even after conducting interviews with administrators, staff, and students and reviewing voluminous student records, OCR was unable to determine whether, for most reported incidents of harassment based on race, color, or national origin, students were disciplined, even though District Policy JICK-EB permitted suspension or expulsion for incidents related to bullying, harassment, or intimidation of others. In instances where OCR became aware of disciplinary action through interviews and reviewing emails, it was often difficult to ascertain the specific discipline that the School administered because the School did not adequately generate or maintain records and staff could not recall, with confidence, what, if any, consequences were given. When OCR could identify the discipline for a given incident of harassment based on race, color, or national origin, the consequences included watching a video, lunch detention, one day of in-school suspension, or one day of out-of-school suspension. AP 1 said that the School did not follow any specific policies or procedures when disciplining students; instead, discipline was left entirely to administrator discretion.

Staff acknowledged to OCR that students’ parents influenced the decision-making process for determining discipline for student behavior, including harassment based on race, color, or national origin. Specifically, the Principal, AP 1, and Teacher 1 told OCR that students with more combative, aggressive, or vocal parents – even if those students were repeat harassers, like Student [redacted content] – were less likely to be disciplined. In March 2022, AP 1 told the Complainant that students who used racial slurs were “already on their radar,” but that the District was reluctant to discipline the students because their parents would deny the allegations and push back against the District’s administration.

In all specific instances of harassment described in this letter, the School failed to adhere to District policies and procedures governing the investigation of reported or observed harassment. For example, the School did not require employees to create detailed, written descriptions of incidents and the principal did not provide students who were allegedly harassed “a written copy of student rights, protections and support services available to the student,” did not consistently “notify the student’s parent(s)/guardian(s) of the suspected incident of harassment,” and typically did not meet with the involved students to review the findings of investigations. All of these steps are required by District Policy JICK. School staff also did not follow required procedures for “student concerns, complaints, and grievances,” as detailed in District Policy JII-R, such as having an investigator meet with the student to discuss the conclusions and actions taken as a result of the investigation or preparing a written report of findings.

In terms of school-level responses to widespread student-on-student harassment based on race, color, and national origin, the School took only three steps – all during about a six-week period in the first semester of SY 2021-22. Specifically, AP 1 sent an email to teachers, organized a “Words Matter” assembly, and created a “Bully Box.” She also showed a video to a few students.

On September 13, 2021, AP 1 sent an email to teachers in grades 5-8 with the subject line, “Sensitive Subject the n-word.” The email stated in pertinent part, “There is a growing awareness that we have students in our school who would benefit from some cultural awareness (acceptance of other cultures and identities) training. I have several names of students who are throwing the word around without an apparent understanding of its degrading and dehumanizing impact on others.” AP 1 told OCR that she did not provide the teachers with the names of the “several students” referenced in the email because staff were already aware of the students’ names; however, teachers told OCR that they did not know the identities of the students. In the email, AP 1 informed the teachers that she would show the students who were using the n-word a “Words Matter” video during recess. AP 1 also requested that the teachers report any use of the n-word to her. No staff replied to AP 1’s email.

AP 1 told OCR that she showed the “Words Matter” video to Student [redacted content], Student [redacted content], and one other student whose name she could not recall. Notably, AP 1 told OCR that the video does not discuss race.

On October 6, 2021, AP 1 informed staff, via email, that an assembly would take place “[d]ue to recent bullying, disrespect and discourse that does not represent our school well[.]” The Principal wrote to OCR that AP 1 “sought this assembly after hearing from different students that there was a growing concern of students in those grades making inappropriate and racist comments and jokes when out of earshot of adults.” The Principal also informed OCR that teachers and students had been reporting that students were using “racial language,” including the n-word.

The School held the “Words Matter” assembly for seventh and eighth graders on October 19, 2021, and for fifth and sixth graders on October 22, 2021. According to AP 1, the presentation included an overview of the School’s Positive Behavioral Interventions and Supports (PBIS) framework, statistics about the prevalence of bullying, questions about bullying, strategies for bullying prevention, hypothetical bullying scenarios, and an announcement about a new “Bully Box.” AP 1 stated that some School staff were not supportive during the assembly; rather than engaging in dialogue with students, those staff members stood in the back and did not participate. AP 1 also showed part of a video titled, “Let’s Get Real.” The description of the video on YouTube reads:

“Let’s Get Real” examines issues that lead to taunting and bullying, including racial differences, perceived sexual orientation, learning disabilities, religious differences, sexual harassment and others. ...

Features youth speaking frankly about their varied and often painful experiences related to bullying at school, and helps open dialogue about the underlying prejudice-related to issues such as gender identity, race, national origin, class, religion, sexual orientation and more- that is fueling the bullying epidemic.

According to the Student, some students in the assembly laughed in response to a Black student in the video saying, “I have been called [n-word].”

A Black [redacted content] student (Student 12) delivered prepared remarks during the assembly, stating that she had witnessed numerous racist comments by students at the School. According to AP 1, staff did not ask Student 12 to provide more details about the comments. Students left the assembly with a “Bully Box” card and reflection questions.

The “Bully Box” is a small, locked box located on a table, just inside the front door of the School and near the front of the main office. A pen is attached to the box. A slot on the side of the box holds copies of small cards that read “Bully Incident” at the top and “Submit to Bully Box by Lost & Found” at the bottom, with seven lines for text in between.

After the assembly, some parents complained to AP 1, the Principal, and the District about the lack of prior notice about the event, the video that was shown, and the “Bully Box.” [Redacted content]. AP 1 told OCR that she was “slandered on Facebook as a liberal invader” after the assembly. AP 2 said that parents berated AP 1, claiming that she was trying to “bring woke culture to the School,” and that the District “came down” on AP 1. The Principal acknowledged to OCR that the School might have taken further steps to address racial harassment if the staff had not received intense criticism from parents about the assembly. Teacher 3 shared with OCR that seventh-grade teachers have discussed how an outside professional or outside organization needs to provide training for students and staff at the School because the assembly was inadequate in addressing harassment at the School.

B. Legal Analysis and Conclusions

OCR found that at least a dozen students of color in grades 5-8 at the School, in addition to the Student, were harassed by peers based on race, color, or national origin. Those students were subjected to racist slurs, jokes, insults, symbols, and gestures. District staff had notice of this racial harassment because staff witnessed some of it, and parents and students reported it in person, via emails, and in survey responses. Some white students also reported to District staff that they were being negatively impacted by harassment aimed at students of color. Several staff told OCR that they were aware of peer harassment based on race, color, or national origin in the School. Nevertheless, the District never took steps to evaluate if this harassment created a hostile environment for the students at the School who were the subject of those reports or to offer supports or remedies for students who were harassed, even when discipline records confirmed the reported harassment.

The District’s discipline of students who engaged in harassment was inconsistent, and, at times, nonexistent even though District policy prohibited harassment based on race and permitted suspension or expulsion for incidents related to bullying, harassment, or intimidation of others. Staff did not adequately investigate the harassment and did not follow District policies, such as conducting adequate investigations, preparing written reports of investigations, or notifying parents of incidents or the outcomes of investigations. The District took only three school-level steps in response to widespread harassment based on race, color, and national origin: sending an email to teachers in grades 5-8, holding an assembly for grades 5-8, and establishing a schoolwide “Bully Box.” The District did nothing to redress the hostile environment at the School for students of color after October 2021, despite ongoing reported harassment. The District did not conduct follow-up interviews with victims of harassment; administer climate surveys or focus groups; initiate professional development for staff, social and emotional

learning for students, or mediation or restorative practices; or remind students and parents about prohibitions on harassment or how to report harassment.

The District's minimal and ineffective responses to numerous reported instances of harassment based on race, color, and national origin failed to prevent its recurrence and allowed a hostile environment to fester and persist at the School in SY 2021-22. Given the pervasive, persistent, and at times severe racial harassment reported by students to School staff and OCR, OCR found that a hostile environment existed based on race, color, and national origin for other students at the School and that the District accepted, tolerated, and left it uncorrected. The District also failed to investigate the known hostile environment at the School to identify other students who may have been subjected to harassment and a hostile environment but did not report such harassment given the School's repeated failures to respond promptly and effectively to reported harassment.

VI. District Recordkeeping

The regulation implementing Title VI, at 34 C.F.R. § 100.6(b), requires recipients like the District to keep and submit "timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as . . . [OCR] may determine to be necessary . . . to ascertain" the recipient's compliance with Title VI. In a Title VI investigation like this one, such records include complete and accurate records of harassment complaints, investigations, and school discipline that will enable OCR to ascertain whether the District's response to student harassment complies with the nondiscrimination requirements of Title VI.

OCR's investigation was impeded by the School's incomplete recordkeeping, particularly with respect to discipline records, investigation records, and records of communications with students and their parents concerning harassment. School staff often did not create or retain records related to specific incidents of harassment. For example, AP 1, who handled most behavior issues for grades 5-8, told OCR that she did not always document reported incidents and typically did not log parent contacts. This testimony was consistent with the documentary evidence. Though AP 1 and numerous other School employees told OCR that Student 3 used the n-word "constantly" and has a long discipline history, including numerous incidents of racial harassment, OCR could not find any discipline records for Student 3 in the District's electronic student information system.

While these gaps in the data were not so significant as to prevent OCR from making a determination about the District's compliance with Title VI based on the collective data and by relying on other sources of evidence like employee testimony, OCR has a compliance concern that the District's records regarding harassment complaints, investigations, and student discipline in SY 2020-21 and SY 2021-22 fell short of its recordkeeping obligations under Title VI. OCR found that some records concerning specific incidents of harassment often were not generated or retained, District staff did not consistently document reported incidents of harassment or contact with parents, and the District did not generate or maintain complete discipline records for students with documented incidents of harassment. The absence of discipline records for many reported incidents of harassment based on race, color, and national origin in both school years leaves the District unable to demonstrate to OCR that it took appropriate disciplinary action in response to

confirmed incidents and that such action was effective in stopping the harassment. For these incidents, OCR is left to conclude that the District took no disciplinary action in response to numerous reports of racial harassment and that this explains, at least in part, why it continued unabated.

These record-keeping issues contribute to OCR finding that the District did not adequately respond to harassment of the Student and numerous other students at the School. Resolving these violations will require that the District creates and maintains timely, accurate, and complete records of complaints and reports of student harassment and the District's response to all such incidents of harassment.

VII. Conclusion

Upon being advised of the violation findings and compliance concerns, the District entered into a Resolution Agreement (Agreement) to resolve the matters. A signed copy of the Agreement is attached with this letter. When the Agreement is fully implemented, the issues will be resolved consistent with the requirements of Title VI and its implementing regulations. OCR will monitor implementation of this Agreement through periodic reports from the District about the status of the Agreement terms. When fully implemented, the Agreement will address OCR's identified violations. OCR will monitor the implementation of the Agreement until the District is in compliance with its terms and the statutory and regulatory obligations under Title VI that were at issue in the case.

This case is now in the monitoring phase. The monitoring of this case will be completed when OCR determines that the District has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the District stating that this case is closed.

This concludes OCR's investigation in this case and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determinations in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information, which, if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation extended to OCR during the investigation and resolution of this case. If you have any questions, please contact the attorneys assigned to this case: Jason Langberg [redacted content]; and Michael Athy [redacted content].

Sincerely,

/s/

Daniel Contreras
Supervisory Team Leader

Attached: Resolution Agreement (signed)

cc: Megan Bennett, School Principal ([redacted content])
Dale Shough, Executive Director of Elementary Education ([redacted content])
Carter Davidson, Chief Student Services Officer ([redacted content])
Kathy Hoffman, Arizona Superintendent of Public Instruction ([redacted content])